

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Applications 12684, 12693 and 13554 by Ernest Haeckel to appropriate water from San Jose Creek in Santa Barbara County for Domestic Purposes and Irrigation.

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Decision A. 12684, 12693, 13554 D. 704

Decided May 28, 1951

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATIONS ON JANUARY 17, 1951:

Ernest Haeckel	Applicant
Leland Crawford	Applicant's Attorney
U. S. Grant	Applicant's Engineer
Angelo Bosio	Protestant
Mr. Rowe	Representing Protestant Zimdin
Joe L. Cavaletto	Protestant
Peter Cavaletto	Protestant
Thomas M. Mullen	Attorney for the protestants Cavaletto
Joseph Sexton III	Protestant
J. J. Heacock	Associate Hydraulic Engineer, Division of Water Resources, Department of Public Works, Representing the State Engineer.

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OPINION

General Description of the Projects

Application 12684 contemplates an appropriation of 666 gallons per day, year-round, from San Jose Creek in Santa Barbara County, for domestic purposes and irrigation. The proposed point of diversion and the proposed place of use both lie within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, T 5 N, R 28 W, S.B.B. & M. The project includes a pumping plant, 20 gallons per minute in capacity, a small concrete dam and 950 lineal feet of 1 $\frac{1}{2}$ inch pipe. Three homes are to be served, each with a half acre garden. A 2 acre orchard and a half acre of general crops are to be irrigated, from April 1 to November 1.

Application 12693 contemplates an appropriation of 10000 gallons per day from November 1 to June 1 of each season for domestic purposes and irrigation from San Jose Creek. The proposed point of diversion is also within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, T 5 N, R 28 W, S.B.B. & M., and in other respects it appears identical with Application 12684.

Application 13554 contemplates an appropriation of 10000 gallons per day from June 2 to October 31, the diversion also to head within the same quarter quarter section as above described. This application is identical with Applications 12684 and 12693 in the matter of diversion and conveyance facilities and place and nature of use.

Protests

Angelo and Frances Bosio protest that Applicant Haeckel is above them on San Jose Creek, that in the summer months of the last few years the flow of that stream has been almost nothing, and that they (the protestants) do not get enough water for their own needs which include domestic use, stock-watering and the irrigation of 20 acres of lemons. The protestants

Bosio claim a riparian right. They also claim that they have used the water in question for 20, and their predecessors for at least 60, years. They state that they divert at a point within the $1/4$ $1/4$ of Section 34, T 5 N R 28 W, S.B.B. & M. They protest Applications 12684, 12693 and 13554. They are silent as to terms under which their protests may be disregarded and dismissed.

William Zimdin, doing business as Golden West Estates, also protests all three of the applications. He claims rights to divert from San Jose Creek, based upon Licenses 2670 and 2964 as well as riparian rights. Under his alleged rights he claims to divert at a point within the $1/4$ $1/4$ of Section 3, T 4 N R 28 W, S.B.B. & M., and at a point within the $1/4$ $1/4$ of Section 33 of the next township to the north. He asserts that the applicants proposed appropriations plus all existing diversions will exceed the flow of San Jose Creek in normal years. Protestant Zimdin states that he has 150 acres of lemons which depend for the most part upon San Jose Creek for irrigation water. Under his licenses he claims to divert 300 acre-feet between December 1 and May 1, annually. He claims also to have been pumping continuously since 1937 from 2 wells which supply irrigation water for about 30 acres of lemons and are in turn charged from San Jose Creek. He states that his protest may be disregarded and dismissed in the event of the denial of the applications.

Joe L. and Selina E. Cavaletto claim to divert from San Jose Creek at a point within the $1/4$ $1/4$ of Section 3, T 4 N R 28 W, S.B.B. & M. They base their claim of a right to so divert upon continued use upon riparian lands, during the 20 years last past. They protest the three applications, claiming that the proposed appropriations plus diversions

under existing rights will exceed, in most years, the flow of San Jose Creek. They state that they are dependent upon the flow of that stream for their domestic water supply and for their supply for irrigation of lemon orchards. They state that in recent years increased diversion by upstream appropriators and riparians has so depleted the flow of the stream that for upwards of 5 months per year water has not reached their property. Their protest, they state, may be disregarded and dismissed if the applications are denied.

Peter and Elisa Cavaletto protest the applications on grounds identical with those set forth in the protest by Joe L. and Selina E. Cavaletto.

Joseph Sexton III protests Application 13554 only. He states that his diversion heads in Lot 7, Section 34, T 5 N R 28 W, S.B.B. & M., his right to so divert being based upon use begun prior to 1914. He states that water is used by 4 families, that water was first used shortly after 1900, and that use extends from April until November, and includes domestic use, stock-watering and limited irrigation. He contends that the diversion of more water, as applied for, from San Jose Creek, would dry that stream in summer, at his point of diversion, for a longer period than under present conditions. He asserts that there have been times lately when he could not get any water whereas it used to run there throughout the year. His protest is silent as to terms under which it may be disregarded and dismissed.

Answers

In answer to the protest by Angelo and Frances Bosio the applicant contends that the protest by those parties does not set forth a proper ground of protest, that no appropriation by those parties is alleged, that his (the applicant's) lands are riparian, and are approximately 2 miles distant

from the protestant's lands, due to which distance, he argues, damage to the protestants from the proposed diversions could not result.

The applicant answers the William Zimdin protest by stating that his applications are only for surplus water, by denying that the protestant's riparian rights if any will be affected by the granting of any of his applications and by asserting that his property is wholly riparian and lies approximately 2.5 miles upstream from the protestant's property.

The applicant's answers to the protests by Joe L. and Selina E. Cavaletto and by Peter and Elisa Cavaletto are substantially the same as his answers to the protest by William Zimdin.

In answer to the protest by Joseph Sexton III the applicant contends that that protestant has not set forth a proper ground of protest inasmuch as the applications are for surplus water only and no appropriation by the protestant is alleged in the protest. The applicant further asserts that his lands are upper-riparian with respect to the protestant's lands, and that in view of the distance of approximately 3 miles between the two properties, the applicant's proposed appropriations can in no way damage the protestant.

Field Investigation

The applicant and the protestants having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code, a field investigation was conducted at the site of the proposed appropriations on January 17, 1951, by an engineer of the Division. The applicant and the protestants were all present or represented at the investigation.

Discussion

The flow of San Jose Creek at a highway bridge 1.7 miles north of Goleta has been recorded by the U. S. Geological Survey since January, 1941. The location of the U. S. Geological Survey gage is approximately opposite the Cavaletto properties, whereon are made the lowermost diversions of record. The mean flow of San Jose Creek at the point mentioned, in cubic feet per second, to include the latest season for which figures have been released, is reported to have been as follows:

:Month:	Season								:Mean :
	: 41-42 :	: 42-43 :	: 43-44 :	: 44-45 :	: 45-46 :	: 46-47 :	: 47-48 :	: 48-49 :	
: Oct.:	.38	.19	.21	.18	.04	0	0	0	.125:
: Nov.:	.45	.32	.21	3.73	.17	5.11	0	0	:1.25 :
: Dec.:	3.72	.37	1.00	.48	3.51	3.6	0		:.207:1.61 :
: Jan.:	1.37	29.40	.41	.51	.19	.138	0		:.152:4.02 :
: Feb.:	.53	6.50	9.04	7.35	.47	.076	.02		:.086:3.01 :
: Mar.:	.69	9.05	5.18	1.79	2.84	.37	.3	2.82	:2.88 :
: Apr.:	4.14	1.64	.78	.70	.65	.17	.187		:.119:1.05 :
: May :	.78	.74	.66	.41	.39	.13	0	1.06	:.52 :
: Jun.:	.23	.25	.277	.08	0	.005	0	.097	:.117:
: Jul.:	.15	.24	.118	.102	0	0	0	0	:.076:
: Aug.:	.06	.096	.089	.006	0	0	0	0	:.031:
: Sept:	.16	.117	.083	.015	0	0	0	0	:.047:
:12 mo:	1.06	4.09	1.48	1.23	.70	.80	.022	.385	:1.23 :
:Av. :									
: 6 mo:	1.82	7.88	2.77	2.43	1.31	1.58	.084	.564	:2.30 :
:Av.* :									
:*Months of November to April, both inclusive.									

According to the report of the investigation of January 17, 1951, the protestants Cavaletto secure their water supplies by pumping from wells located along the bank of San Jose Creek. From this it follows that surface flow passing their property and recorded at the U.S.G.S. gage is water which has not penetrated into the formation from which they pump and is therefore to be regarded, at such times as it occurs, in the absence of objection by parties farther down stream, as unappropriated water.

The appropriations sought by the applicant aggregate 10666 gallons per day, equivalent to approximately 0.017 cubic foot per second. From the stream flow figures tabulated it is evident that while there have been occasional months of zero flow at the U.S.G.S. gage, yet the 8 year means (as shown in the last column of the tabulation) have in all cases exceeded the small amount applied for. This indicates that the flow of the stream, on average, is sufficient to supply both the applicant and the protestants Cavaletto. Those protestants pump (according to the report of investigation) at the rate of some 490 gallons per minute (roughly 1.09 cubic feet per second), which rate, they state, drops 30 to 40% when the creek goes dry. It cannot be seen that the abstraction of 0.017 cubic foot per second as applied for will injure those protestants materially. By their own admission during the investigation their pumping rate does not diminish as long as the creek carries surface flow and the small diversions proposed cannot appreciably hasten the failure of surface flow. In view of these circumstances the objections of the protestants Cavaletto are considered insufficient to bar approval of the applications.

Similar reasoning applies in connection with the objections by the protestants Bosio and by Protestant Zimdin. According to the report of investigation the Bosios pump from four wells which yield, when there is water in the creek, an aggregate of some 175 gallons per minute (0.39 cubic foot per second). Protestant Zimdin, according to the same report pumps from a well which produces 65 gallons per minute when there is surface flow in the stream, 40 to 45 gallons per minute otherwise. His property (Golden West Estates, Inc.) also holds Application 9718, License 2617, authorizing the diversion to storage of 150 acre-feet per annum, collected between December 1 and May 1. In view of the record of flow at the U.S.G.S. gage and the amounts diverted by the Bosios and Zimdin it is concluded that the diversions proposed by the applicant will not materially affect these protestants.

The protest by Joseph Sexton III differs from the other protests in that it is based in part upon a diversion of surface flow. It is directed against Application 13554 only, which proposes a diversion of 10000 gallons per day (approximately 0.0155 cubic foot per second) from June to October, both months inclusive. During the 8 years of available stream flow records June flow averaged more than 0.0155 cubic foot per second 5 times, July flow 4 times, August flow 3 times, September flow 3 times and October flow 5 times. In view of the probability of material interference with Protestant Sexton's diversion of surface flow, and the limited supply that the figures indicate might be available to the applicant and the irregularity of that supply, the approval of Application 13554 is believed unwarranted.

With reference to Applications 12693 and 13544 the report of investigation states as follows:

"Applications 12693 and 13544 do not cover the proposed project as conceived by the applicant. Application 12693 is for the diversion of 10000 gallons per day from November 1 to June 1 and Application 13544 is to divert 10000 gallons per day from June 2 to October 31, or the balance of the year. The project as conceived is to construct one or more small reservoirs, to store 8 or 10 acre-feet of water, and to divert to storage during the winter runoff season for use during the summer months. Application 12693 should definitely have been for storage."

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"When the insufficiency of Applications 12693 and 13554 to cover the needs of the Applicant was called to his attention he decided to file another application to cover storage. If the application is to divert to storage between about November 1 and May 1, and the amount diverted be limited to not over 1 cubic foot per second, there probably will be no protests by the parties present at the investigation."

With reference to Application 12684 the report of the investigation states:

"Under Application 12684, to divert 666 gallons per day throughout the year, amounting to less than one half gallon per minute of continuous flow, the amount is so small that it could not materially affect the lower users."

The approval of Application 12684 while subject to the same objection as applies in connection with Application 13554 is nevertheless subject to that objection in much lesser degree. In view of the small amount involved in that earlier application, the evident existence of surpluses in most months of all years and in every month of some years, and the assurance of the investigating engineer that the diversion sought

thereunder "could not materially affect the lower users" it is the opinion of this office that Application 12684 should be approved, subject to the usual terms and conditions. Because of the limited and erratic occurrence of surpluses during the season for which water is sought under Application 13554 and the probable interference of diversions thereunder with diversions by Protestant Sexton it is the opinion of this office that Application 13554 should be denied. In view of the investigating engineer's expressed belief that Application 12693 is not appropriate to the applicant's project and that the applicant so realizes and in due course intends to file a new application, for storage, to take its place, action upon Application 12693 should for the time being be withheld.

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ORDER


Applications 12684, 12693 and 13554 for permits to appropriate water having been filed, protests having been filed, a field investigation having been made, a stipulated hearing having been held in accordance with Section 733(b) of the Administrative Code and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 12684 be approved and that a permit be issued to the applicant, subject so such of the usual terms and conditions as may be appropriate.

IT IS FURTHER ORDERED that action upon Application 12693 be withheld until further order is entered.

IT IS FURTHER ORDERED that Application 13554 be rejected
and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public
Works, of the State of California this 23th day of May , 1951.



A. D. EDMONSTON, STATE ENGINEER

